Health Care Reform in Indian Country

Self-Governance Communication & Education

Self-Governance Tribes Striving Towards Excellence in Health Care

TSGAC ACA/IHCIA Project Priority Issues

July 13, 2021

TOPIC	ISSUE DESCRIPTION	TRIBAL REQUESTS & RECOMMENDED TSGAC ACTION	NOTES
Medicare Telehealth Flexibilities *CMS*	The COVID-19 public health emergency has demonstrated that telehealth and communications based technology can increase access to primary, specialty, and behavioral health services particularly in rural areas. Medicare telehealth is a narrow benefit with geographic, site of service, and technological constraints. CMS has introduced numerous flexibilities to Medicare telehealth and communications based services during the pandemic, including vastly expanding eligible services. But many flexibilities are set to expire. ***Issue:*** Current rates and parameters around providing telehealth are not sustainable, thus Tribes are having to subsidize costs of providing services.	***Tribal Medicare Recommendations:*** 1. Congress removing geographic and site of service restrictions on Medicare telehealth services; 2. Congress expanding the types of providers that may bill for Medicare telehealth services; 3. Congress allowing facilities to collect a fee when they are coordinating telehealth visits for patients in their homes; 4. CMS permitting audio-only telecommunications systems to be used to deliver Medicare telehealth services, including audio-only telephones and two-way radios; 5. CMS ensuring that Medicare reimburses Indian health care providers for telehealth services at the OMB rate; 6. CMS permanently expanding, in consultation with Tribes, the types of services eligible for Medicare telehealth reimbursement; 7. CMS permanently expanding, in consultation with Tribes, the availability and sustainability of virtual check-ins and e-visits, including allowing them for new patients;	• **Telehealth Resources for Providers:** https://www.telehealth.hhs.gov/providers/ • **Medicare Telehealth FAQs:** https://www.cms.gov/files/document/medicare-telehealth-frequently-asked-questions-faqs-31720.pdf

		8. CMS permanently authorizing direct supervision requirements for services incident to a physician's services to be fulfilled using real-time interactive audio and video technology; and 9. CMS issue guidance to States confirming that they can authorize Medicaid reimbursement for telehealth services at the IHS OMB rates. ***TSGAC Actions:*** 1. Creation of a Medicare Telehealth Brief highlighting new reimbursable services through the PHE and after the PHE. 2. Identify a list of Medicare telehealth services that should be provided reimbursement parity with face-to-face services.	
Medicaid Telehealth CMS	Unlike Medicare, telehealth is not by statute a distinct Medicaid benefit. States have broad flexibility to cover telehealth services in their Medicaid State Plans. No SPA is needed to pay for services delivered via telehealth so long as payment rates and methodologies do not differ from in-person services.	***Tribal Recommendations:*** CMS should facilitate State–Tribal dialogue regarding expansion of telehealth services under Medicaid State Plans. ***TSGAC Action:*** • Request that CMS work with Tribes to engage States regarding expansion of telehealth services under existing Medicaid State Plans, with those services being reimbursed at the OMB rate.	• **Medicaid/CHIP Telehealth Toolkit:** https://www.medicaid.gov/medicaid/benefits/downloads/medicaid-chip-telehealth-toolkit.pdf • **State Telehealth Policies** are available at https://www.cchpca.org/all-telehealth-policies/
CHAP Nationalization *IHS, HHS, CMS, SAMHSA, HRSA*	Initiation of tribal consultation on the use of $5M from FY 2020 appropriations (available until 9/30/21). Feedback requested: • How funding can be used to support Tribes to begin operating CHAP;	***Tribal Recommendations:*** 1. Need for resources for training, certification and reimbursement. 2. Inclusion of ISDEAA and Self-Governance Tribes from the beginning. ***TSGAC Action:*** ○ Creation of CHAP Brief for Self-Gov Tribes.	• National CHAP creation- Indian Health Manual Circular 20-06 **CHAP Policy: 7/2** • IHCIA Sec.119: Authorizes the Secretary to establish a national CHAP.

	• Development of National and Area Certification Boards; • Training investment; and • Community education.		• Sec.10221(b) of ACA allows use of DHATs when authorized under state law. • Involve TSGAC before decisions are made. • 11/20/2020 TSGAC submitted comments on the $5 million for national CHAP expansion.
MEDICARE PRIORITIES			
Medicare Part C Payments by Medicare Advantage *CMS*	***Issue:*** Medicare Advantage plans are not reimbursing IHCPs at the IHS OMB rates, and often refuse to reimburse at all. ***Issue:*** According to CMS, if the provider is a closed HMO (like Kaiser) then the HMO does not have to pay. However, if the provider is a PPO managed care entity then they pay BUT at the contract rate. According to Shawn O'Grady at CMS, Section 206 gives the Tribe the right to be reimbursed, but they are working on at what rate	***Tribal Recommendations:*** 1. Require Medicare Advantage (MA) plans to pay the OMB rate. 2. Tribes have the right of recovery under IHCIA Sec. 206. Request to revisit the issue with OGC and IHS. ***TSGAC Actions:*** 1. Request that CMS require payment at the OMB rate. 2. Request CMS to create guidance for reimbursement to Tribes on MA plans.	
Medicare Part D Reimbursement *CMS*	***Issue:*** Medicare Part D claims being denied as non-payable claims, which impacts compliance on DIR fees for standards of care then cascades to program fees on compliance. ***Issue:*** Problematic on how the standards of care are gathered on how Tribal pharmacies provide Part D medications.	***Tribal Recommendations:*** 1. Tribal pharmacies are entitled to reimbursement. 2. Adjusting the I/T/U addendum for Part D contracts, which is also a system fix. 3. Need a way to mark I/T/U facility NPI numbers. ***TSGAC Actions:*** Advocate for an administrative solution to override the compliance denial issue.	

Medicare Part B Penalties Relief *CMS*	***Issue:*** Medicare Part B imposes penalties for individuals who delay enrollment once they are eligible. Currently, there are no exceptions for individuals who are eligible for care from the IHS, even though they are like beneficiaries of employment-based insurance plans and do not need additional coverage.	***Tribal Recommendations:*** Request that AI/AN individuals be exempt from part B premiums and at a minimum IHS coverage should be deemed creditable coverage so AI/AN enrollees in Part B are not subject to late-enrollment penalties.	• There may be a credible coverage exception for Part B to provide another way to address the issue instead of equitable relief issue.
Medicare Part B Tribal Sponsorship *CMS*	***Issue:*** States can pay Medicare the cost of the Part B premiums, however, Tribes are not able to do this. Currently, Tribes can reimburse individuals for the cost of Part B premiums, but the Medicare beneficiaries have to pay the premiums first.	***Tribal Recommendations:*** 1. Eliminate Part B premiums for AI/ANs. If premiums are not eliminated, Tribes must be able to sponsor and directly pay for Part B premiums for their Tribal members and pay in one lump sum similar to states. ***TSGAC Actions:***	
MEDICAID PRIORITIES			
Managed Care *CMS*	***Issue:*** IHCPs continue to have difficulty being paid correctly by Medicaid Managed Care organizations (MCOs). States don't do enough to enforce the requirements (42 C.F.R. § 438.14) and CMS has not done enough to address these issues.	***Tribal Recommendations:*** 1. CMS should issue a SHO letter informing States that they will be required as a condition of approving any managed care SPA or waiver to include compliance with the requirements at 42 C.F.R. § 438.14 as a condition of payment in their contracts with MCOs. 2. CMS should require all MA plans to automatically deem Indian health care providers as in-network even if they do not enroll in a provider agreement. 3. Utilization of a Tribal Template for MCO contract	• CMS is rethinking the Managed Care Oversight infrastructure. • CMS has developed a protocol where NACs for your area can be a POC and once they receive a complaint from a IHCP, the NAC can work with DTA to determine if there is a violation of MC rules. It will track the issues, have a point of contact and this will expedite resolutions. • CMS sponsored a Medicaid Managed Care Roundtable highlighting best practices (repor is forthcoming).

Four Walls Grace Period *CMS*	***Issue:*** CMS's grace period for compliance with the "4 walls" restriction for Medicaid clinic services will expire on October 21, 2021. ***Issue:*** Need for re-interpretation because the services and reimbursement are not the same under an FQHC status versus a tribal clinic.	***Tribal Recommendations*** • Re-evaluate four walls interpretation due to the differences between reimbursement for services under FQHC versus a Tribal clinic designations.	• CMS TTAG is in the process of finalizing a white paper and letter to CMS requesting a re-interpretation. • 14 states have approved SPAs with 12 more states that need to submit SPAs. Tribes caution that some states are seeing it as beneficial, but in others it there is not a perfect alignment between what clinics are covered and FQHC's are covered.
Marketplace *CMS*	***Issues:*** **1.** Increase AI/AN (FFM) enrollment with zero and limited cost-sharing protections. **2.** Increase enrollment in bronze metal level Marketplace plan for AI/AN enrollees to receive the greatest value. **3.** *Enrollment Issue somewhat-resolved*: a member of a federally recognized tribe won't be able to use the special cost-sharing savings if they enroll in the same Marketplace plan with a non-tribal member. Tribal members and non-tribal members should enroll in separate plans to take advantage of all potential savings.	***Tribal Recommendations:*** 1. Continue to gather and report Marketplace metrics including returning to the regular year-end (November) reports. 2. Analyze reduced net premium costs for Marketplace coverage under the American Rescue Plan Act. 3. Continue to work with TTAG on identification of helpful adjustments or additions, including on-screen notices that appear during the Marketplace Application process. 4. Expansion of subsidies present more opportunities to enroll. 5. Enhance premium sponsorship. ***TSGAC Actions:*** 1. Educate Tribes and Tribal members on recent changes on HealthCare.gov where Tribal members are informed of not enrolling in the same Marketplace plan with non-Tribal members to maintain cost-sharing protections. 2. Request a significant outreach effort for AI/ANs because the new premium	• TTAG Policy Subcommittee recommended change to Q&A for households consisting of AI/ANs and non-AI/AN family members. CCIIO made the requested changes.

		subsidies make tribal premium sponsorship even more valuable. Request outreach funding for tribes that is tribal specific and not through the Navigators program which is problematic for tribes.	
VA PRIORITIES			
VA Reimbursement/ VA-THP Contracts *IHS, VA*	***Issues***: **1.** VA and IHS amended the national Reimbursement Agreement: • Includes telehealth as "direct care services"; • Extension of agreement until June 30, 2024; • Clarifies language in quality section for certification and accreditation requirements; and • Adds new section for reimbursement for care provided by IHS through PRC program during COVID-19 emergency (need to make this permanent). **2.** Reimbursement from VA for PRC Services **3.** Elimination of co-pays for AI/AN Veterans **4.** Transparency and enhancement of Tribal Health Program reimbursement agreements. **5.** Development and implementation of the VA Tribal Advisory Committee.	**IHS & VA draft final MOU** **VA DTLL (Dec. 2)** • 12/24/2020: **3 Native Veteran Health laws were passed within H.R. 7105:** ○ Native American Veterans PACT Act eliminates copayments for AI/AN Veterans accessing VA healthcare; ○ PRC for Native Veterans Act clarifies reimbursement from VA and DOD for healthcare services provided to AI/AN Veterans through an authorized referral; and ○ Veterans Affairs Tribal Advisory Committee Act of 2019. ***TSGAC Actions:*** ○ 5/28/21: TSGAC submitted comments on VA Tribal Consultation Identification- Documentation for AI/AN Veteran Exemption from Collection of Healthcare Copayments. ○ 3/2/21: TSGAC submitted comments on the IHS and VA Draft Revised MOU	• VA reports that 116 Tribal Health Programs have individual reimbursement agreements with the VA/VHA. The agreements vary immensely.